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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/912,317	07/26/2001	Yoshihiko Sano	NPR-084	4945

20374 7590 08/04/2003

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EXAMINER

CHORBAJI, MONZER R

ART UNIT PAPER NUMBER

1744

DATE MAILED: 08/04/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/912,317

Applicant(s)

SANO ET AL.

Examiner

MONZER R CHORBAJI

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 26 July 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 4-7 is/are rejected.
- 7) ☒ Claim(s) 2 and 3 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Double Patenting*

1. Claims 1 and 4-5 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 6-7 of copending Application No. 09/903,715 in view of Riede et al (U.S.P.N. 4,293,409).

This is a provisional obviousness-type double patenting rejection.

With respect to claim 1, claim 1 of copending Application No. 09/903,715 teaches a chamber divided into three compartments such that the three compartments (numbered lines 2-3) encompass the two compartments of claim 1 of copending Application No. 09/912,317 (numbered lines 2-3). Furthermore, whether two or three or more compartments in a chamber, one skilled in the art can not practice one invention (a chamber divided into three compartments) without the other invention (a chamber divided into two compartments). In addition, claim 1 of copending Application No. 09/903,715 discloses the following: a dissolving solution supply line (numbered lines 4-5), a dialysate solution preparing line such that certain part of it is a first solution preparing line and another certain part of it is a second solution preparing line (numbered lines 6-7), a tank connected with the first compartment and is provided in the dialysate solution preparing line (numbered lines 8-10), a transporting pump provided in the other certain part of it, for example, a second solution preparing line second solution preparing line (numbered lines 9-10), a solution transporting line (numbered lines 12-13), a circulating line (numbered lines 17-18), and a

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concentration meter (claim 7, numbered line 2). With regard to the solution tank, claim 1 of copending Application No. 09/903,715 teaches a solution tank such that it is credible that any type of a solution tank has an upstream tank portion and a downstream tank portion that are in liquid communication at bottoms. However, claim 1 of copending Application No. 09/903,715 fails to disclose providing a filter in a downstream portion of the downstream tank portion. Riede et al discloses a solution tank (3) having the following: an upstream tank portion (unlabeled upper part of the tank) and a downstream tank portion (unlabeled lower part of the tank) such that the bottoms of both portions are in liquid communication, and a filter (13) provided in a downstream portion of the downstream tank portion. Thus, it would have been obvious to one having ordinary skill in the art to modify the apparatus of copending Application No. 09/903,715 in order to remove solid particles from the water (Riede et al, col.2, lines 5-9).

With respect to claim 4, claim 1 of copending Application No. 09/903,715 teaches a powder supply means is provided above the inherent upstream tank portion (i.e., above the solution tank). See claim 1, numbered line 11.

With respect to claim 5, Riede et al discloses a level detecting sensor is provided in the upstream tank portion of the tank (4).

2. Claims 6-7 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-9 of copending Application No. 09/903,715 in view of Riede et al (U.S.P.N. 4,293,409) and further in view of Shouldice (U.S.P.N. 4,814,073).

This is a provisional obviousness-type double patenting rejection.

With respect to claims 6-7, the claims of copending Application No. 09/903,715 fails to teach the use of a powder level sensor and the use of a heater. Riede et al teaches a heater (col.1, lines 62-63) but fails to disclose the use of a powder level sensor. However, Shouldice discloses the use of a powder level sensor (44). Thus, it would have been obvious to one having ordinary skill in the art to modify the apparatus of copending Application No. 09/903,715 to include a powder level sensor in order to achieve the desired concentration of the powder (Shouldice, abstract, lines 10-13 and col.2, lines 38-41).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-7 are provisionally rejected under 35 U.S.C. 103(a) as being obvious over copending Application No. 09/903,715 which has a common assignee (NIPRO Corporation) with the instant application. Based upon the earlier effective U.S. filing date of the copending application, it would constitute prior art under 35 U.S.C. 102(e) if published or patented. This provisional rejection under 35 U.S.C. 103(a) is based upon a presumption of future publication or patenting of the conflicting application.

5. Claims 1 and 4-5 are rejected under 35 U.S.C. 103(a) as being

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Unpatentable over claims 1 and 6-7 of copending Application No. 09/903,715 in view of Riede et al (U.S.P.N. 4,293,409).

With respect to claim 1, claim 1 of copending Application No. 09/903,715 teaches a chamber divided into three compartments such that the three compartments (numbered lines 2-3) encompass the two compartments of claim 1 of copending Application No. 09/912,317 (numbered lines 2-3). Furthermore, whether two or three or more compartments in a chamber, one skilled in the art can not practice one invention (a chamber divided into three compartments) without the other invention (a chamber divided into two compartments). In addition, claim 1 of copending Application No. 09/903,715 discloses the following: a dissolving solution supply line (numbered lines 4-5), a dialysate solution preparing line such that certain part of it is a first solution preparing line and another certain part of it is a second solution preparing line (numbered lines 6-7), a tank connected with the first compartment and is provided in the dialysate solution preparing line (numbered lines 8-10), a transporting pump provided in the other certain part of it, for example, a second solution preparing line second solution preparing line (numbered lines 9-10), a solution transporting line (numbered lines 12-13), a circulating line (numbered lines 17-18), and a concentration meter (claim 7, numbered line 2). With regard to the solution tank, claim 1 of copending Application No. 09/903,715 teaches a solution tank such that it is credible that any type of a solution tank has an upstream tank portion and a downstream tank portion that are in liquid communication at bottoms.

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However, claim 1 of copending Application No. 09/903,715 fails to disclose providing a filter in a downstream portion of the downstream tank portion. Riede et al discloses a solution tank (3) having the following: an upstream tank portion (unlabeled upper part of the tank) and a downstream tank portion (unlabeled lower part of the tank) such that the bottoms of both portions are in liquid communication, and a filter (13) provided in a downstream portion of the downstream tank portion. Thus, it would have been obvious to one having ordinary skill in the art to modify the apparatus of copending Application No. 09/903,715 in order to remove solid particles from the water (Riede et al, col.2, lines 5-9).

With respect to claim 4, claim 1 of copending Application No. 09/903,715 teaches a powder supply means is provided above the inherent upstream tank portion (i.e., above the solution tank). See claim 1, numbered line 11.

With respect to claim 5, Riede et al discloses a level detecting sensor is provided in the upstream tank portion of the tank (4).

6. Claims 6-7 are rejected under 35 U.S.C. 103(a) as being Unpatentable over claims 1-9 of copending Application No. 09/903,715 in view of Riede et al (U.S.P.N. 4,293,409) and further in view of Shouldice (U.S.P.N. 4,814,073).

With respect to claims 6-7, the claims of copending Application No. 09/903,715 fail to teach the use of a powder level sensor and the use of a heater. Riede et al teaches a heater (col.1, lines 62-63) but fails to disclose the use of a powder level sensor. However, Shouldice discloses the use of a powder level

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sensor (44). Thus, it would have been obvious to one having ordinary skill in the art to modify the apparatus of copending Application No. 09/903,715 to include a powder level sensor in order to achieve the desired concentration of the powder (Shouldice, abstract, lines 10-13 and col.2, lines 38-41).

7. This provisional rejection might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the copending application was derived from the inventor of this application and is thus not the invention "by another," or by a showing of a date of invention for the instant application prior to the effective U.S. filing date of the copending application under 37 CFR 1.131. For applications filed on or after November 29, 1999, this rejection might also be overcome by showing that the subject matter of the reference and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. See MPEP § 706.02(I)(1) and § 706.02(I)(2).

#### ***Allowable Subject Matter***

8. Claims 2-3 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

9. The prior art made of reference but not relied upon is considered pertinent to applicant's disclosure. deHass (U.S.P.N. 3,653,640) discloses a tubular solution tank. Era et al (U.S.P.N. 4,935,125), Sano et al (U.S.P.N. 4,606,826),



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and Nikaido et al (U.S.P.N. 6,277,272) disclose similar apparatuses for preparing solutions as the instant claims.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MONZER R CHORBAJI whose telephone number is (703) 305-3605. The examiner can normally be reached on M-F 8:30-5:00.

11. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ROBERT J WARDEN can be reached on (703) 308-2920. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

12. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Monzer R. Chorbaji *MR*  
Patent Examiner  
AU 1744  
June 30, 2003

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